

AMENDED IN ASSEMBLY APRIL 29, 2009

AMENDED IN ASSEMBLY APRIL 16, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1521

Introduced by Assembly Member Jones

February 27, 2009

An act to add ~~Sections 1359.1 and 1359.2~~ *Section 1359.1* to the Health and Safety Code, and to add ~~Sections 10119.4 and 10119.45~~ *Section 10119.4* to the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 1521, as amended, Jones. Health care coverage: solicitation.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law also provides for the regulation of health insurers by the Department of Insurance. Existing law regulates the solicitation of health care service plan products and health insurance. ~~Existing law specifies that certain persons who assist applicants in submitting an application to a health care service plan or health insurer have a duty to assist those applicants in providing answers to health questions accurately and completely and requires those persons to make a specified attestation on the written application. Existing law prohibits a plan or insurer from entering into an agreement with an agent, broker, or solicitor that provides for or results in the compensation paid to the agent, broker, or solicitor for the sale of a health care service plan contract or health insurance policy to a small employer or an individual~~

to be varied because of specified characteristics of the small employer or individual.

This bill would prohibit a plan or insurer from entering into an agreement with a solicitor, as specified, that provides for or results in the compensation paid to the solicitor for the sale, offer, or application for an individual health care service plan contract or individual health insurance policy to be varied because of the health status, claims experience, industry, or occupation of the individual. The bill would also prohibit a plan or insurer from entering into an agreement with a solicitor that provides for or results in a different percentage of premium or compensation level paid to the solicitor if the solicitor, at the time of renewal of an individual or group contract, submits an application that results in the offer or purchase of coverage for a different health plan contract or health insurance policy with the same health plan or health insurer instead of renewal of the individual or group's existing plan contract or insurance policy. The bill also would require a plan or insurer, or solicitor representing a plan or insurer, at the time of renewal of an individual health care service plan contract or individual health insurance policy, to notify the individual that application for a different contract or policy may result in an offer, an offer for a higher premium, or denial of coverage for that different contract or policy. The bill would prohibit an application for a different benefit design from changing the terms and conditions of the individual plan currently held by the applicant and would require a solicitor to identify the specific plans or insurers that the solicitor is offering.

~~This bill would specify that an entity submitting an application to a plan or insurer that results in the offer, sale, or purchase of health care coverage has a duty of honesty, good faith, and fair dealing to the offeree or purchaser of that coverage. The bill would also require that entity to disclose to the offeree or purchaser, prior to the sale or purchase of coverage, any compensation received by the entity as fees, commissions, or any other remuneration or thing of value, as specified. The bill would prohibit the entity from receiving any compensation other than that disclosed pursuant to these provisions. If the application or offer is made by an employee of the plan or insurer, the bill would require the application or offer to include a written disclosure of that fact.~~

Because a willful violation of the bill's requirements relative to health care service plans would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1359.1 is added to the Health and Safety
2 Code, to read:

3 1359.1. (a) A plan shall not, directly or indirectly, enter into
4 any contract, agreement, or arrangement with a solicitor that
5 provides for or results in the compensation paid to the solicitor
6 for the sale, offer, or application of an individual health care
7 service plan contract to be varied because of the health status,
8 claims experience, industry, or occupation of the individual. This
9 subdivision does not apply to a compensation arrangement paid
10 to a solicitor on the basis of a percentage of premium, provided
11 that the compensation level shall not vary because of the health
12 status, claims experience, industry, or occupation of the individual.

13 (b) A plan shall not, directly or indirectly, enter into any
14 contract, agreement, or arrangement with a solicitor that provides
15 for or results in a different percentage of premium or compensation
16 level paid to the solicitor if, at the time of renewal of an individual
17 or group plan contract, the solicitor submits an application that
18 results in the offer or purchase of coverage for a different health
19 plan contract with the same health care service plan instead of
20 renewal of the individual or group's existing health plan contract.

21 (c) At the time of renewal of an individual health care service
22 plan contract, the health plan, or any solicitor representing the
23 health plan, shall notify the individual that application for a
24 different individual health plan contract may result in a review of
25 the applicant's medical history that could result in an offer, an
26 offer for higher premium, or denial of coverage entirely for the
27 different plan being applied for. An application for a different
28 benefit plan design shall not change the terms and conditions of
29 the individual health plan currently held by the applicant.

1 (d) *The solicitor shall identify the specific health plan or health*
2 *plans the solicitor is offering.*

3 (e) *For purposes of this section, “solicitor” shall have the same*
4 *meaning as provided in subdivision (m) of Section 1345 and shall*
5 *include an agent, broker, solicitor, solicitor firm, or any other*
6 *entity that engages in solicitation as defined in subdivision (l) of*
7 *Section 1345.*

8 SEC. 2. *Section 10119.4 is added to the Insurance Code, to*
9 *read:*

10 10119.4. (a) *A health insurer shall not, directly or indirectly,*
11 *enter into any contract, agreement, or arrangement with an agent,*
12 *broker, solicitor, or any other entity engaging in the sale, offer,*
13 *or application for individual health insurance that provides for or*
14 *results in the compensation paid to the agent for the sale of a*
15 *health insurance policy to be varied because of the health status,*
16 *claims experience, industry, or occupation of the individual. This*
17 *subdivision does not apply to a compensation arrangement that*
18 *provides compensation to an agent on the basis of a percentage*
19 *of premium, provided that the compensation level shall not vary*
20 *because of the health status, claims experience, industry, or*
21 *occupation of the individual.*

22 (b) *A health insurer shall not, directly or indirectly, enter into*
23 *any contract, agreement, or arrangement with an agent, broker,*
24 *solicitor, or any other entity that provides for or results in a*
25 *different percentage of premium or compensation level paid to the*
26 *agent, broker, solicitor or other entity if, at the time of renewal of*
27 *an individual or group health insurance policy, the agent, broker,*
28 *solicitor, or other entity submits an application that results in the*
29 *offer or purchase of coverage for a different health insurance*
30 *policy with the same health insurer instead of renewal of the*
31 *individual or group’s existing health insurance policy.*

32 (c) *At the time of renewal of an individual health insurance*
33 *policy, the health insurer, or any agent, broker, solicitor, or any*
34 *other entity representing the health insurer, shall notify the*
35 *individual that application for a different individual health*
36 *insurance policy may result in a review of the applicant’s medical*
37 *history that could result in an offer, an offer for a higher premium,*
38 *or denial of coverage entirely for the different plan being applied*
39 *for. An application for a different benefit plan design shall not*

1 *change the terms and conditions of the individual health plan*
2 *contract currently held by the applicant.*

3 *(d) The agent, broker, or solicitor or other entity shall identify*
4 *the specific insurer or insurers the agent, broker, or solicitor is*
5 *offering.*

6 SECTION 1. ~~Section 1359.1 is added to the Health and Safety~~
7 ~~Code, to read:~~

8 ~~1359.1. An agent, broker, solicitor, solicitor firm,~~
9 ~~representative, or any other entity that submits an application to a~~
10 ~~health care service plan that results in the offer, sale, or purchase~~
11 ~~of individual or group health care coverage from a health care~~
12 ~~service plan has a duty of honesty, good faith, and fair dealing to~~
13 ~~the offeree or purchaser of that coverage.~~

14 SEC. 2. ~~Section 1359.2 is added to the Health and Safety Code,~~
15 ~~to read:~~

16 ~~1359.2. (a) (1) An agent, broker, solicitor, solicitor firm,~~
17 ~~representative, or any other entity that submits an application to a~~
18 ~~health care service plan that results in the offer, sale, or purchase~~
19 ~~of individual or group health care coverage from a health care~~
20 ~~service plan shall disclose to the offeree or purchaser of that~~
21 ~~coverage any compensation received by the agent, broker, solicitor,~~
22 ~~solicitor firm, representative, or other entity involved in the~~
23 ~~transaction as fees, commissions, or any other remuneration or~~
24 ~~thing of value. The disclosure shall include any compensation to~~
25 ~~be received by the agent, broker, solicitor, solicitor firm,~~
26 ~~representative, or other entity at any time prior to, during, or after~~
27 ~~the period of coverage as a result of the transaction or potential~~
28 ~~transaction.~~

29 ~~(2) If the application or offer is made by an employee of the~~
30 ~~health care service plan, the application or offer shall include a~~
31 ~~disclosure in writing that the application or offer is being made by~~
32 ~~an employee of the health care service plan. If the compensation~~
33 ~~of the employee is dependent on the volume or amount of~~
34 ~~purchases he or she generates, this shall also be disclosed to the~~
35 ~~offeree or purchaser.~~

36 ~~(b) The disclosure to the offeree or purchaser shall be made~~
37 ~~prior to the sale or purchase of coverage.~~

38 ~~(c) (1) The disclosure shall provide an estimate of the~~
39 ~~percentage of the premium to be paid by the offeree or purchaser~~

1 as compensation to the agent, broker, solicitor, solicitor firm,
2 representative, or other entity.

3 (2) The estimate shall include the percentage of premium to be
4 paid to the agent, broker, solicitor, solicitor firm, representative,
5 or other entity in the first year of coverage and in future years, if
6 any.

7 (d) The health care service plan may provide to the offeree or
8 purchaser of individual or group health care coverage the
9 information required under this section. If the plan provides the
10 information to the offeree or purchaser, it shall also provide the
11 same information to the agent, broker, solicitor, solicitor firm,
12 representative, or other entity engaged in the transaction.

13 (e) The agent, broker, solicitor, solicitor firm, representative,
14 or other entity shall receive no compensation from the plan, the
15 offeree or purchaser, or any other source except for the
16 compensation disclosed to the offeree or purchaser pursuant to
17 this section.

18 SEC. 3. Section 10119.4 is added to the Insurance Code, to
19 read:

20 10119.4. An agent, broker, or any other entity that submits an
21 application to a health insurer that results in the offer, sale, or
22 purchase of individual or group health insurance, as defined in
23 Section 106, has a duty of honesty, good faith, and fair dealing to
24 the offeree or purchaser of that insurance.

25 SEC. 4. Section 10119.45 is added to the Insurance Code, to
26 read:

27 10119.45. (a) (1) An agent, broker, or any other entity that
28 submits an application to a health insurer that results in the offer,
29 sale, or purchase of individual or group health insurance, as defined
30 in Section 106, from a health insurer shall disclose to the offeree
31 or purchaser of that insurance any compensation received by the
32 agent, broker, or other entity involved in the transaction as fees,
33 commissions, or any other remuneration or thing of value. The
34 disclosure shall include any compensation to be received by the
35 agent, broker, or other entity at any time prior to, during, or after
36 the period of insurance as a result of the transaction or potential
37 transaction.

38 (2) If the application or offer is made by an employee of the
39 health insurer, the application or offer shall include a disclosure
40 in writing that the application or offer is being made by an

1 ~~employee of the health insurer. If the compensation of the~~
2 ~~employee is dependent on the volume or amount of purchases he~~
3 ~~or she generates, this shall also be disclosed to the offeree or~~
4 ~~purchaser.~~

5 ~~(b) The disclosure to the offeree or purchaser shall be made~~
6 ~~prior to the sale or purchase of insurance.~~

7 ~~(c) (1) The disclosure shall provide an estimate of the~~
8 ~~percentage of the premium to be paid by the offeree or purchaser~~
9 ~~as compensation to the agent, broker, or other entity.~~

10 ~~(2) The estimate shall include the percentage of premium to be~~
11 ~~paid to the agent, broker, or other entity in the first year of~~
12 ~~insurance and in future years, if any.~~

13 ~~(d) The health insurer may provide to the offeree or purchaser~~
14 ~~of individual or group health insurance the information required~~
15 ~~under this section. If the insurer provides the information to the~~
16 ~~offeree or purchaser, it shall also provide the same information to~~
17 ~~the agent, broker, or other entity engaged in the transaction.~~

18 ~~(e) The agent, broker, or other entity shall receive no~~
19 ~~compensation from the insurer, the offeree or purchaser, or any~~
20 ~~other source except for the compensation disclosed to the offeree~~
21 ~~or purchaser pursuant to this section.~~

22 ~~SEC. 5.~~

23 *SEC. 3.* No reimbursement is required by this act pursuant to
24 Section 6 of Article XIII B of the California Constitution because
25 the only costs that may be incurred by a local agency or school
26 district will be incurred because this act creates a new crime or
27 infraction, eliminates a crime or infraction, or changes the penalty
28 for a crime or infraction, within the meaning of Section 17556 of
29 the Government Code, or changes the definition of a crime within
30 the meaning of Section 6 of Article XIII B of the California
31 Constitution.